MILAN S. PAPULAK

IBLA 75-50 Decided March 30, 1976

Appeal from decision of the Utah State Office, Bureau of Land Management, rejecting oil and gas lease offer U-24621.

Set aside and Remanded.

1. Oil and Gas Leases: Applications: Filing

   The listing of lands for the simultaneous filing of oil and gas lease offers does not constitute a determination by the Department of the Interior that conditions prevail in every instance which assure the availability of those lands for further leasing. The publication of the list merely serves as notice that offers to lease the lands listed will be received. The filing of an offer for a listed tract creates no contractual relationship between the offeror and the United States.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Stipulations

   A decision rejecting an oil and gas lease offer because the State Office wishes to reconsider whether a lease should issue subject to a no surface occupancy stipulation will be set aside and the case remanded for the Bureau of Land Management, in the exercise of its delegated discretion to lease public lands for oil and gas, to determine whether in the light of Chevron Oil Company, 24 IBLA 159 (1976), it wishes to issue a lease subject to a no surface occupancy stipulation, or whether it still wishes to make the subject land not available for leasing at this time, which is within its authority.

APPEARANCES: Milan S. Papulak, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Milan S. Papulak has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated June 14, 1974, rejecting his simultaneously-filed oil and gas lease offer. This offer drew first priority for parcel 244. The grounds for the rejection, in essence, were that the Office had been reviewing the matter since the drawing; had determined the lands should not have been listed with a no surface occupancy stipulation; that appellant's advance rental and filing fee would be refunded; and, in effect, that the lands would not be leased while it was reviewing the matter.

On appeal, appellant contends a lease should be issued to him because:

(1) The lease was offered as prescribed by regulation

(2) A drawing was held, and I was determined the successful offeror

(3) I submitted my first year rental which the B.L.M. did deposit seven months ago

(4) I accept the lease as offered on the list with the "No Surface Occupancy" stipulation

(5) For the Utah State Office to issue a lease to an applicant on a parcel adjoining mine and won in the same month, and to not issue a lease to me would not only be arbitrary, but would constitute a flagrant case of discrimination.

As set forth in the decision below, applicable facts are:

Under the regulations in 43 CFR 3112.1-2 on November 16, 1973, this office posted a notice of lands subject to simultaneous filings of oil and gas lease offers. The notice included a list of lands identified by parcel numbers, gave instructions for submitting offers, and indicated that leases issued for certain parcels would contain special stipulations.

The fifth paragraph of the notice states: Those parcels requiring restricted stipulations are indicated by an asterisk (*). Parcels requiring no surface occupancy stipulations are indicated by two asterisks (**)." The notice adds: "Filing of the offer to lease will be considered as acceptance of these terms and conditions

by the offeror." Finally, the notice cautions: "The official records of this office should be consulted for status information affecting the lands in the leasing units listed."

During the filing period, 24 offers were received for a 2,400-acre parcel in Grand County, Utah, described as: S 1/2 S 1/2 Sec. 15, S 1/2 S 1/2 Sec. 16, S 1/2 S 1/2 Sec. 17, all Secs. 21, 22, and 27, T. 24 S., R. 24 E., SLM. A double asterisk (**) preceded the land description. A drawing was held and it was determined that Milan S. Papulak was the successful offeror. William G. Pendleton was drawn No. 2, and W. G. Lasrich was drawn No. 3. By notice dated December 17, 1973, Mr. Papulak was directed to submit first year's rental in the amount of $1,200 within 15 days from receipt thereof. The rental was submitted on December 28.

On January 8, 1974, Mr. Papulak directed a letter to this office in connection with his offer to lease stating that it had come to his attention that there would be a no surface occupancy stipulation attached to the lease and charging that BLM had put up worthless acreage which affords the lessee no rights to explore or to reasonably drill his lease. He requested that the no surface occupancy stipulation be lifted or that he receive a decision of justification.

Since that time we have been reviewing the matter. While no final determination has as yet been made as to whether oil and gas leasing is totally incompatible with the scenic values, we have determined that the lands should not have been listed with a stipulation so restrictive that it interferes with the lessee's right of enjoyment or severely impairs or actually precludes development. Cf. Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972), and George A. Breene, 13 IBLA 53 (1974).

Because the lands should not have been listed with the no surface occupancy stipulation, the offer of Milan S. Papulak, Serial No. U-24621 is hereby rejected. The advance rental will be refunded as well as the $10 filing fees accompanying each offer.

[1] [2] As was stated in Stanley Ustan, 13 IBLA 89 (1973),

The listing of lands for the simultaneous filing of oil and gas lease offers does not constitute a determination by the Bureau of Land Management that conditions

> prevail in every instance which assure the availability of those lands for further leasing. The publication of the list merely serves as notice that offers to lease the lands listed will be received. Usually such lands are in fact available, but it is only upon the adjudication of a proper application that a decision is made as to whether a particular parcel will actually be leased for oil and gas, and if so, whether any special stipulations will condition the lease. Ordinarily, the Bureau will not decide the issue of the availability of a particular tract of land for leasing in the absence of a qualified offer to lease. An offer to lease for oil and gas is just that - an offer by the applicant, and no contractual relationship exists between the offeror and the United States unless the offer is accepted and the lease is fully executed. Easton E. Brodsky, 76 I.D. 286 (1969); Schraier v. Hickel, 419 F.2d 663 (1969); James W. McDade, 3 IBLA 226 (1971), aff'd McDade v. Morton, 353 F. Supp. 1006 (1973); Albert P. Mickunas, 12 IBLA 375 (1973).

Moreover, the Secretary of the Interior has the discretionary authority to issue oil and gas leases under such rules and regulations as he deems necessary. 30 U.S.C. § 189 (1970). 43 CFR 3109.2-1 specifically provides that the Bureau of Land Management, which is the delegate of the Secretary of the Interior, may require such special stipulations as are necessary for the protection of land embraced by a lease. It is the Bureau's responsibility to determine which are appropriate and reasonably related to oil and gas activities. John Oakason, 6 IBLA 277 (1972).

We note that appellant in his statement of reasons says: "* * * under the circumstances I will accept the `No Surface Occupancy' stipulation, bearing in mind that I am permitted to employ directional drilling should exploration ever so necessitate." In the recent Chevron Oil Company, 24 IBLA 159 (1976), the appellant therein also manifested its consent to take leases subject to "no occupancy" stipulations and including, if found necessary, directional drilling. The Chevron Oil Company case was remanded to the State Office for a reevaluation to determine whether a NEPA environmental statement was appropriate and, if it was, to consult with the Forest Service, and to reevaluate, under the circumstances, whether or not to lease the land in question. It was further noted in the Chevron case that if appellant maintained its position of being willing to accept a lease with a no surface occupancy stipulation, then leases might be promptly issued, all else being regular. In sum, it would seem that under Chevron, an offeror may take a lease subject to no occupancy stipulations, if such offeror so agrees.

In the light of the above, we believe that the instant case should be remanded to the Utah State Office for a reevaluation under the holding of the Chevron case. Then if the State Office thinks it can issue a lease with a no surface occupancy stipulation, it may grant such lease to the appellant. If after reviewing the instant case in the light of Chevron, and the Utah Office still is of the opinion that it does not wish to lease the land involved with a no surface occupancy stipulation, then its decision is proper because it has the authority so to decide. Under the circumstances, however, the offer should not be rejected until a decision is made as to whether the land will be leased.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded for further appropriate consideration.

Anne Poindexter Lewis
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Edward W. Stuebing
Administrative Judge